

TAB 1

**EXCERPTS FROM THE DEPOSITION OF BRUCE A.
ROSENFELD**

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

- - -

ANNA K. NUPSON,

Plaintiff,

VS.

SCHNADER HARRISON SEGAL
& LEWIS, LLP, and BRUCE A.
ROSENFIELD, ESQ.,

Defendants. NO. 2:18-cv-02505-NIQA

- - -

CONFIDENTIAL

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Videotaped deposition of BRUCE A.

ROSENFIELD, ESQUIRE, taken at Dilworth Paxon, LLP,
1500 Market Street, Suite 3500E, Philadelphia,
Pennsylvania, on Thursday, June 24, 2021, beginning
at approximately 9:11 a.m., before Elizabeth Kelly,
Professional Reporter and Notary Public in and of
the Commonwealth of Pennsylvania.

WITH CONFIDENTIALITY DESIGNATIONS BY NON-PARTIES
JOHN S. MIDDLETON AND BRADFORD HOLDINGS, INC.,
PURSUANT TO THE FEBRUARY 28, 2020 STIPULATED
PROTECTIVE ORDER ENTERED IN THIS MATTER

- - -

1 around?

2 MR. MANNION: So to the extent that
3 involves discussions with Mrs. Middleton that
4 were not in the presence of a third party
5 and/or Mr. Rosenfield was not authorized to
6 reveal those communications to the third party,
7 John Middleton as co-executor of Frances
8 Middleton's estate will assert a privilege. So
9 I'll caution the witness to be thinking about
10 those parameters.

11 MR. MCMICHAEL: Okay. Mr. Rosenfield, the
12 question is: When was the topic of a GRAT
13 first -- when did it first come about? You can
14 answer the question of when without referring
15 to any discussions that might be privileged.
16 So we'll take it one question at a time.

17 THE WITNESS: Somewheres around 1999.

18 MR. DAVIS: Okay.

19 THE WITNESS: Possibly before that.

20 BY MR. DAVIS:

21 Q Okay. Let me back up and just see if I
22 understand.

23 Did Frances Middleton ever authorize
24 you to discuss either the oral GRAT or GRAT 1 with
25 Anna Nupson?

1 MR. MCMICHAEL: Yeah. At what point in
2 time?

3 BY MR. DAVIS:

4 Q At any point in time?

5 A Yes. In 2002.

6 Q Okay.

7 A Later in 2002.

8 Q Do you have a writing of that
9 authorization?

10 A No.

11 Q She just orally provided that?

12 A Yes.

13 Q When did she do that?

14 A I think at -- well, I think it was in -- I
15 think at the meeting that I had with Fran and Anna
16 was in September of 2002.

17 Q And did she permit you to discuss all of
18 the details of the oral GRAT or GRAT 1 with Anna
19 Nupson?

20 A Yes.

21 Q Okay. So I don't think the privilege
22 stands anymore. It seems to be waived. Perhaps I'm
23 wrong. We'll just keep going on the questions and
24 see where we get.

25 MR. MCMICHAEL: Yeah. I mean, I think

1 that -- I think we probably all agree that
2 there is no privilege with respect to the
3 September meeting and the directions that Mr.
4 Rosenfield had from Fran in connection with
5 that meeting. I think if you ask questions
6 about what their discussions were in 1999 about
7 GRAT and other, you know, alternative estate
8 plans, there's going to be an assertion of
9 privilege.

10 BY MR. DAVIS:

11 Q Well, I am going to ask you those
12 questions.

13 What were those discussions with Fran

14 --

15 A What --

16 **(Indecipherable cross-talk.)**

17 THE WITNESS: I'm sorry, I don't
18 understand what you're saying.

19 BY MR. DAVIS:

20 Q Sure. Let me -- well, first, let me --
21 we're going to mark as Exhibit 44 the billing from
22 3/12/99. Let me get you your billing, and then
23 hopefully, that will kind of center us a little bit.

24 - - -

25 (Exhibit 44 was marked for

1 identification.)

2 - - -

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 Q Okay. And who is Roy Ross?

12 A Well, a colleague of mine in the trust and
13 estates group at Schnader.

14 Q Would he be drafting for GRATs, and
15 trusts, and things?

16 A Yes.

17 Q Okay. So this appears, at least in the
18 documentation, the first time I've seen the term
19 GRAT mentioned with Frances, all right. And so I'm
20 trying to -- and I think that coincides with about
21 the timeframe that you mentioned earlier.

22 And so what I would like to know is:
23 What are the discussions you had with Frances
24 regarding a GRAT in this timeframe?

25

1 MR. MANNION: Again, on behalf of Mr.
2 Middleton as co-executor, I'm going to object
3 to the extent that it involves a discussion
4 with Mrs. Middleton that did not include a
5 third party or that Mr. Rosenfield was not
6 specifically authorized to reveal to third
7 parties.

8 And, Mr. Davis, you made a reference to
9 authorizing information to be revealed to Ms.
10 Nupson. There is a difference between
11 authorizing specifics and authorizing every
12 aspect of every conversation that Mrs.
13 Middleton had with Mr. Rosenfield.

14 So again, if it's been authorized by Mrs.
15 Middleton to be released or there was a third
16 party present, there is no objection.
17 Otherwise, we are asserting the privilege.

18 MR. MCMICHAEL: All right. So I'm going
19 to ask you a couple of questions to determine
20 whether I'm going to direct you not to answer.
21 Did you have a conversation with Mrs. Middleton
22 around March of 1999? Do you recall? And just
23 answer yes or no. I don't want you to describe
24 the conversation, obviously.

25 THE WITNESS: I don't recall.

1 MR. MCMICHAEL: All right. Okay. What's
2 your question now?

3 BY MR. DAVIS:

4 Q Well, let me back up. My understanding of
5 your testimony was you recalled that a GRAT was
6 being discussed in the 1999 timeframe.

7 That was the first time that there
8 was any discussions of a GRAT with Ms. Middleton?

9 A **There may have been discussions before**
10 **that.**

11 Q Okay. I am asking you now, those
12 discussions, either before that or in 1999, what
13 were those discussions?

14 MR. MCMICHAEL: All right. Don't answer
15 that question. Let me ask you a couple
16 questions first. Did Mrs. Middleton authorize
17 you to reveal those discussions to third
18 parties, whatever discussions you were having
19 at that point in time?

20 THE WITNESS: No.

21 MR. MCMICHAEL: And were there other
22 parties present, other than Schnader lawyers,
23 during those discussions?

24 THE WITNESS: Yes.

25 MR. MCMICHAEL: Who else was present?

1 THE WITNESS: John Middleton would have
2 been present. And it is possible that in some
3 discussions, John Stein could have been
4 present.

5 MR. MCMICHAEL: And who is John Stein?

6 THE WITNESS: The family accountant.

7 MR. MCMICHAEL: Okay. So I need some
8 guidance on your privilege assertion with
9 respect to conversations where John Middleton
10 was present.

11 (Discussion was held off the record.)

12 MR. MCMICHAEL: Mr. Rosenfield, at the
13 time that these discussions occurred with Ms.
14 Middleton, was John a co-client?

15 THE WITNESS: Yes.

16 MR. MCMICHAEL: He was a co-client. Sorry
17 about this.

18 (Discussion was held off the record.)

19 MR. MCMICHAEL: Okay. So now, Mr.
20 Rosenfield, we just want to make the record
21 clear. At the time of the discussion, was John
22 a co-client for purposes of the discussion you
23 were having?

24 THE WITNESS: I'm sorry, I don't
25 understand that.

1 MR. MCMICHAEL: When you were having the
2 discussions with Ms. Middleton and with John,
3 were you, in your mind, representing both of
4 them in connection with that discussion that
5 you were having?

6 MR. DAVIS: With the GRAT discussion.

7 MR. MCMICHAEL: The GRAT discussion, yes.

8 THE WITNESS: I mean, John was involved in
9 it. I mean, they were primarily for -- for
10 Fran and for estate planning for Fran.

11 MR. MCMICHAEL: Yeah. I'm going to direct
12 the witness not to answer at this point.

13 MR. DAVIS: All right.

14 MR. MCMICHAEL: I mean, if you want to go
15 off the record, I can have a more fulsome
16 discussion with counsel for Mr. Middleton about
17 it right now, or we can just keep moving and
18 deal with it later. It's your call.

19 MR. DAVIS: Let me -- let me ask one
20 follow-up question, and I --

21 MR. MCMICHAEL: Sure.

22 MR. DAVIS: -- may let you do that.

23 BY MR. DAVIS:

24 Q Mr. Rosenfield, the 2002 permission
25 provided by Frances Middleton, did she authorize you

1 to speak to her daughter, Anna Nupson, about the --
2 everything related to the GRAT, GRAT 1 or the oral
3 GRAT as I'm defining them?

4 **A Yes.**

5 **Q** She did, okay.

6 And that would include discussions
7 prior to the actual formation of the oral GRAT or
8 GRAT -- the execution of GRAT 1?

9 **A No. She simply asked me to discuss with**
10 **Anna the terms of the GRAT.**

11 **Q** Okay. And did you take that authorization
12 to include an authorization to discuss the formation
13 of the GRAT and all of the surrounding
14 circumstances?

15 **A No, I didn't. No.**

16 **Q** Okay. Just to make sure I understand, is
17 there any writing that you made to Frances Middleton
18 or to Anna Nupson related to your authorization to
19 speak about the -- either the oral GRAT or GRAT 1?

20 **A No.**

21 **Q** Okay. If you could, and let me not lead
22 you, explain what you understood as the authority
23 you received from Frances Middleton to discuss the
24 GRAT?

25 **A Fran invited me to her house to -- for the**

1 **express purpose of describing it to Anna.**

2 Q Okay. And when you say "describing it to
3 Anna," you're referring to the oral GRAT and GRAT 1?
4 That's what I'm calling them. I know you have a
5 different name for them.

6 **A I do have a different name for them, but**
7 **yes.**

8 Q Okay. And you didn't understand that
9 authorization to include discussions prior to the
10 formation, the oral -- the oral GRAT in
11 February 1st, 2001?

12 **A The discussions -- I'm sorry, there's one**
13 **GRAT, and --**

14 Q Okay.

15 **A -- the discussions were of that GRAT.**

16 Q Okay. I'm just trying to understand the
17 scope because that's what these gentlemen are going
18 to want to discuss. And that's what I'm trying to
19 understand.

20 What was your understanding of the
21 scope of your authorization to speak with Anna
22 Nupson about it?

23 **A It was a meeting that Fran was at. She**
24 **asked me to take the lead and to tell her -- tell**
25 **Anna how the GRAT worked, and that it was there.**

1 MR. DAVIS: Let's go off the record.

2 THE VIDEOGRAPHER: 10:49, off the record.

3 - - -

4 (Recess was taken from 10:49 a.m. to
5 11:01 a.m.)

6 - - -

7 THE VIDEOGRAPHER: 11:01, back on the
8 record.

9 MR. MCMICHAEL: Okay. Mr. Davis, having
10 had a further discussion with Mr. Rosenfield
11 off the record to explore the privilege issues,
12 I'm going to withdraw the direction not to
13 answer the question that was asked immediately
14 prior to the break.

15 And to make our position clear on the
16 record, we will permit Mr. Rosenfield to answer
17 questions concerning his discussions with
18 Frances Middleton prior to the formation of the
19 February 1, 2001 GRAT, provided that John
20 Middleton or another third party was present in
21 those discussions.

22 MR. DAVIS: All right. And for purposes
23 today, Ms. -- John Middleton is going to be
24 considered a third party, and I appreciate that
25 he is a client, but --

1 MR. MCMICHAEL: Well, yeah.

2 MR. DAVIS: Yeah.

3 MR. MCMICHAEL: He is considered a third
4 party at this point in time.

5 MR. DAVIS: Okay.

6 MR. MCMICHAEL: Prior to the formation of
7 the February 1, 2001 GRAT. In connection with
8 the GRAT and thereafter, he was a co-client, as
9 he was trustee of the GRAT.

10 BY MR. DAVIS:

11 Q Okay. With that explanation, can you
12 describe the conversation you had with Mrs.
13 Middleton, Frances Middleton?

14 A I would have had conversations describing
15 the advantages of a GRAT, how they worked, the
16 required terms, and how they fit in with her overall
17 estate planning and the possible benefits, if they
18 were successful.

19 Q I'm going to ask you some questions.
20 These gentlemen are definitely going to have some
21 heartburn. So give them a second. They may need to
22 interrupt you.

23 Okay?

24 A Thank you, thank you.

25 Q During those conversations -- first of